IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 3605 of 2001

with

CRIMINAL MISC.APPLICATION No 8378 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

ANIL L SHEWADE ASST.GENRAL MANAGER

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Misc.Application No. 3605 of 2001
MR KB ANANDJIWALA for Petitioner No. 1-3
MR PR ABICHANDANI, APP for Respondent No. 1
MR MTM HAKIM for Respondent No. 2

2. Criminal Misc.Application No. 8378 of 2001
M/S THAKKAR ASSOC. for Petitioner No. 1
MR PR ABICHANDANI, APP for Respondent No. 1
MR MTM HAKIM for Respondent No. 2

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 03/05/2003

COMMON C.A.V. JUDGEMENT

Both these petitions have been filed under Sec.482 of the Code of Criminal Procedure for quashing and setting aside the Criminal Case No.744 of 2001 lodged by the respondent No.2 pending in the Court of Chief Judicial Magistrate, Vadodara qua the present petitioners.

2. The facts in short are that a complaint was lodged by Ashok Jasbhai Patel, the respondent No.2 herein, directly into the Court of Chief Judicial Magistrate, Vadodara, on 22-2-2001 and it was numbered as Criminal Case No.744 of 2001. According to complainant, he purchased 50 shares of Hindustan Lever Ltd. Rs.10/-per share through a share broker of Mumbai namely, Mr.Kantilal Bhogilal Shah and two share certificates of 25 shares each dated 28-8-2002 were issued by said broker. It is stated by the complainant that after having paid full consideration, share transfer deeds were obtained by the complainant. However, since transfer in his name was to take some time, he kept those certificates along with share transfer deeds for considerable long time. Thereafter, when said share certificates were sent to the Company i.e. to accused Nos.4 and 5, it was informed by the Company that said shares were transferred in the name of Shri C.J.Mahimkar upon issue of duplicate share certificates under prescribed procedure and hence, shares certificates were returned by the Company. It was stated by the complainant that on inquiry it was learnt that accused Nos.1, 2 and 3 knew that shares of Hindustan Liver Ltd. were of his ownership and same were sold to him despite which, accused Nos.1 to 3 namely, Assistant General Manager, SBI, Chairman, SBI & Managing director, SBI respectively in collusion with accused Nos.4 and 5 namely the chairman and managing Director of Hindustan Lever Ltd. got issued duplicate share certificates stating that original certificates were lost. It was further stated that certificates were thereafter transferred in the name of Shri Sunil Mahimkar and Miss Meena Mahimkar and, therefore, complaint was filed by the respondent No.2 against the designations of the present petitioners for the offences punishable under Secs.418, 419, 420 and 114 of Indian Penal Code.

2.1 Pursuant to filing of said complaint, learned

Chief Judicial Magistrate, Vadodara, after recording the verification, issued summons against the accused under Secs.420 and 114 of Indian Penal Code. Hence, both these petitions are filed under Sec.482 of the Code of Criminal Procedure for quashing.

3. Since both these petitions arise out of same Criminal Case filed before the learned Chief Judicial Magistrate, Vadodara, I have heard both these petitions together and are being decided by this common judgment.

4. Heard Mr.K.B.Anandjiwala and Mr.P.M.Thakkar, learned counsels for the petitioners of Cri.Misc.Appln.Nos.3605 of 2001 and 8378 of 2001 respectively and Mr.P.R.Abichandani and Mr.M.T.M.Hakim, learned APP and learned counsel for the respondent Nos.1 and 2 respectively of respective petitions.

5. It is argued by Mr.K.B.Anandjiwala, learned counsel for the petitioners of Cri.Misc.Appln.No.3605 of 2001, that complaint in question has been filed with mala fide intention against the designations of persons by not specifically naming them in the complaint. According to him, the petitioners were not holding said designations at the time when alleged incident had taken place and merely because they were holding the designations at the time of filing the complaint, process has been issued against them, but in fact they are not directly or indirectly connected with the offence in question. It is submitted that petitioner Nos.2 and 3 have never served at the branches of the bank in question.

6. Whereas Mr.P.M.Thakkar, learned senior counsel for the petitioner of Cri.Misc.Appln.No.8378 of 2001 has argued that petitioner was never a Managing Director of Hindustan Lever Ltd. (HLL). According to him, there is no post of Managing Director in HLL and petitioner was appointed in the Board of Directors of the company for the period from 1-8-1995 to 24-11-1998 and he was appointed as Director on 23-2-2000 and as Chairman on 26-4-2000. It is further argued that though the petitioner was Chairman of HLL, he was not directly or indirectly connected with the office of the company as alleged by the complainant, but was looking after the policy matters of the Company. Hence it is argued that petitioner has been involved with ulterior motives as because he was not dealing with the share transfer work and was not even the Chairman or on the Board of Directors of the Company and order of summons has been passed merely by impressing pre-made rubber stamp and hence, the process has been issued by the learned

Magistrate without applying mind as to the nature of allegations made in the complaint and the oral and documentary evidence on the designations of Chairman of HLL along with the Chairman and Managing Director of SBI in a mechanical manner. He has relied upon J.T. 1997(8) S.C. 705. It is further argued that even if the allegations made in the complaint are accepted on their face value, then also, no ingredients of Sec.420 are attracted in the facts of the present case. It is further argued that the respondent No.2-complainant was never induced by the petitioners to deliver the said share certificates, share transfer deeds to him, however, complainant himself had sent the same to the Company and upon receiving the same, the Company informed the complainant that for the same shares, application for duplicate shares was received by the SBI, the holder of shares, and on following due procedure, Company issued duplicate share certificates and, therefore, Sec.420 will not be applicable in the present case. It is further argued that complaint has not been filed naming particular individuals but against the designations of petitioners which is not permissible under criminal trial. It is further argued that Company has not been joined as accused in the proceedings and hence, no official can be roped in as a party accused by virtue of their positions especially when Company has not been joined as accused. It is further argued that complaint in question is required to be quashed in view of the fact that for the same cause of action, complainant had filed consumer complaint seven years back being Case No.216 of 1994 before the Consumer Disputes Redressal Forum at Vadodara, however, said complaint was withdrawn by the complainant on 8-8-1994 vide purshis Ex.15 filed by the complainant. It is further argued that without disclosing these facts, present complaint has been filed without giving any specific details as to the time and place of offence and hence, the impugned complaint is vague and ambiguous. It is submitted as having borne out from the record that said shares appeared to have been purchased by the complainant in January, 1986 while the complaint has been filed in 2000 i.e. after a period of almost 15 years and no explanation is forthcoming for such a long lapse.

7. Learned counsel for the complainant, Mr.M.T.M.Hakim and learned APP for the State have objected granting of these petitions. It is contended that since prima-facie ingredients of offence in question have been disclosed in the complaint more particularly of Secs.420 and 114 of Indian Penal Code, complaint and process issued in said complaint by the court below after

recording verification of the complainant should not be quashed and set aside. It is further contended that court should not evaluate the evidence at this stage. According to them, the points which have been raised by the petitioners are only their defence and same can be availed at the time of trial. It is further contended that petitioners are entitled to avail simultaneous remedies, civil as well as criminal, as law has been settled on this point and, therefore, considering the facts and circumstances of the case, both the petitions be rejected at this stage.

8. I have gone through the complaint as well as the documents shown to me by the learned counsel for the respective parties. It appears from the complaint itself that it has been filed on 22-2-2001 against the designated capacities of petitioners and State Bank of India and Hindustan Lever Ltd. have not been joined as accused in these proceedings.

9. It has been held by the Apex Court in the case of Pepsi Food Limited and another Vs. Special Judicial Magistrate and others, JT 1997(8) S.C. 705 more particularly in para 28 as under:

> "Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. Magistrate has to carefully scrutinize the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused."

10. It appears that learned Magistrate has not

applied his mind and has mechanically issued process against the designations of Chairman of HLL along with Assistant General Manager, SBI, Chairman, SBI and Managing Director, SBI without looking into the nature of allegations as well as other aspects of the matter. It also appears that the complainant was never induced by the present petitioners to deliver the share transfer deeds to them. It is the complainant who had sent the share certificates with share transfer deeds to the company and on receipt of application for duplicate shares received from SBI, duplicate share certificates were issued by the company after following due procedure. Moreover, complaint does not name any individual but names only their designations and that too without making SBI and HLL as accused.

11. It is borne out from the arguments of Mr.P.M.Thakkar that there is no post of Managing Director in HLL and his client was appointed on the Board of Directors of the Company on 1-8-1995 and remained as a Director till 24-11-1998 and thereafter from 23-2-2000 again he was appointed as a Director and as Chairman on 26-4-2000. This indicates that the petitioner of Cri.Misc.Appln.No.8378 of 2001 was never a Managing Director of the Company nor was he the Chairman of the Company at the relevant time.

12. Thus, it is apparent that the petitioners of both the petitions were not holding respective nomenclatures at the relevant time. It is required to be noted at this stage that for the same cause of action the present complainant had preferred complaint before the District Consumer Disputes Redressal Forum at Vadodara being Case No.216 of 1994. Same was withdrawn pursuant to a settlement arrived at between the parties by filing purshis at Ex.15. Ex.15 reads as under:

> "That the dispute between the parties in this case is solved by mutual understanding amongst parties to the present suit and hence, they do not desire to proceed further and hence, the petition is withdrawn and the same is declared by this purshis."

13. It is clear from the above that for the alleged purchase of shares by the complainant in the year 1984-85, complaint has been filed before the District Consumer Disputes Redressal Forum at Vadodara in 1994 and though dispute has been settled between the parties vide purshis Ex.15, present complaint has been filed in 2001 i.e. after a period of seven years by suppressing the

important fact. Moreover, no satisfactory explanation could be given by the respondents for such a long lapse of time in filing of the complaint.

14. Having regard to the above facts and circumstances of the case, I am of the opinion that the impugned complaint does not disclose the prima-facie ingredients of offence in question and hence, it is an abuse of process of law. Hence, in view of the decision of the Apex Court in Pepsi Food Ltd. (supra), impugned complaint requires to be quashed and set aside and these petitions deserve to be allowed.

15. Both these petitions are allowed. Complaint and the process issued in Criminal Case No.744 of 2001 pending in the court of learned Chief Judicial Metropolitan, Vadodara, are quashed and set aside qua the present petitioners of both the petitions. Rule is made absolute accordingly. There shall be no order as to costs.

16. Office is directed to place a copy in each petition.

(R.P.DHOLAKIA,J.)

radhan/